

1 MAGISTRATE JUDGE THEILER  
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OCT 21 2013	
CLERK U.S. DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

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12 UNITED STATES DISTRICT COURT  
13 WESTERN DISTRICT OF WASHINGTON  
14 AT TACOMA  
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17 UNITED STATES OF AMERICA, ) NO. CR12-5473  
18 Plaintiff, )  
19 vs. ) FINDINGS AND ORDER ACCEPTING  
20 JAMES NJUGUNA, ) DEFENDANT FOR DEFERRED  
21 Defendant/Petitioner. ) PROSECUTION, APPROVING  
22 ) TREATMENT PLAN, AND DIRECTING  
23 ) DEFENDANT TO TAKE TREATMENT  
24 ) AS PRESCRIBED  
25 ) (Clerk's Action Required)  
26

27 THIS MATTER, coming on for hearing this 21st day of October, 2013 upon the  
28 defendant's Petition for Deferred Prosecution; the defendant appearing in person and by his  
29 attorney, Linda Sullivan, Assistant Federal Public Defender; the United States of America  
30 being represented by Major Margaret Kurz, Special Assistant United States Attorney; the  
31 Court, having examined and incorporated into the record Petitioner's Petition and Statement  
32 in support of deferred prosecution, the evaluation and treatment report prepared by Affinity  
33 Counseling & Treatment, and the files and records herein, being fully advised in the  
34 premises, does now make and enter the following:

35     ///

36     ///

1                   **I. FINDINGS OF FACT**

2                   A.     On or about the 31st day of August, 2012, Petitioner was charged with the  
3 offenses charged in the Information. These offenses occurred as a direct result of  
4 alcoholism/chemical dependency problems;

5                   B.     Petitioner suffers from an alcohol/drug problem and is in need of treatment;

6                   C.     The probability of similar misconduct in the future is great if the problem is  
7 not treated;

8                   D.     Petitioner is amenable to treatment;

9                   E.     An effective rehabilitative treatment plan is available to Petitioner through  
10 Affinity Counseling & Treatment, an approved treatment facility as designated by the laws  
11 of the State of Washington, and Petitioner agrees to be liable for all costs of this treatment  
12 program;

13                  F.     That Petitioner agrees to comply with the terms and conditions of the program  
14 offered by the treatment facility as set forth in the diagnostic evaluation from Affinity  
15 Counseling & Treatment, attached to Statement of Petitioner filed herewith, and that  
16 Petitioner agrees to be liable for all costs of this treatment program;

17                  G.     That Petitioner has knowingly and voluntarily stipulated to the admissibility  
18 and sufficiency of the facts as contained in the written police report attached to Statement of  
19 Petitioner filed herewith.

20                  H.     That Petitioner has acknowledged the admissibility of the stipulated facts in  
21 any criminal hearing or trial on the underlying offenses held subsequent to revocation of this  
22 Order Granting Deferred Prosecution and that these reports will be used to support a finding  
23 of guilt;

24                  From the foregoing FINDINGS OF FACT, the Court draws the following:

25                  ///

26                  ///

## II. CONCLUSIONS OF LAW

A. That the above-entitled Court has jurisdiction over the subject matter and Petitioner James Njuguna, in this case:

B. That Petitioner's Petition for Deferred Prosecution meets the requirements of RCW 10.05 et seq.:

C. That the diagnostic evaluation and commitment to treatment meets the requirements of RCW 10.05.150;

D. That Petitioner is eligible for deferred prosecution.

### III. ORDER

Having made and entered the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby

ORDERED that the defendant is accepted for deferred prosecution. The prosecution of the above-entitled matter is hereby deferred for five (5) years pursuant to RCW 10.05 et seq., upon the following terms and conditions:

A. Petitioner shall be on probation for the deferral period and follow the rules and regulations of probation;

B. Petitioner shall enroll in and successfully complete the two-year treatment program recommended by Affinity Counseling & Treatment according to the terms and conditions of that plan as outlined in the diagnostic evaluation, a true copy of which is attached to the Petition and incorporated herein by reference. Petitioner shall not change treatment agencies without prior Probation approval;

C. The treatment facility, Affinity Counseling & Treatment, shall file with the United States Probation Office status reports of Petitioner's compliance with treatment, monthly during the first year of the deferred prosecution period and every three (3) months during the second year. The Court may increase the frequency of these reports at its discretion;

1           D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

2           E. Petitioner shall abstain during the deferred prosecution period from any and all  
3 consumption of alcoholic beverages and/or non-prescribed mind-altering drugs;

4           F. Petitioner shall not operate a motor vehicle on the public highways without a  
5 valid operator's license and proof of liability insurance sufficient to comply with the state  
6 laws on financial responsibility;

7           G. Petitioner shall be law abiding and shall not commit any alcohol/drug related  
8 offenses or other criminal offenses during the period of deferral;

9           H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,  
10 questioned, or cited by Law Enforcement;

11          I. In the event that Petitioner fails or neglects to carry out and fulfill any term or  
12 condition of his treatment plan or violates any provision of this Order or any rule or  
13 regulation of his probation officer, upon receiving notice, the Court shall hold a hearing to  
14 determine why Petitioner should not be removed from deferred prosecution and prosecuted  
15 for the offenses charged;

16          J. In the event the Court finds cause to revoke this deferred prosecution, the  
17 stipulated police reports shall be admitted into evidence, and Petitioner shall have his guilt or  
18 innocence determined by the Court;

19          K. That the statement of Petitioner for Deferred Prosecution shall remain sealed,  
20 and all subsequent reports or documents relating to his treatment information shall be sealed,  
21 to maintain confidentiality of Petitioner's treatment information;

22          L. That the Department of Licensing be notified of this Order accepting the  
23 Petitioner for deferred prosecution;

24          M. Upon proof of Petitioner's successful completion of five years deferral period  
25 in this Order, the Court shall dismiss the charges pending against Petitioner.

1 N. Additional conditions: \_\_\_\_\_  
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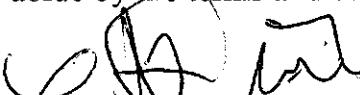
6 DONE IN OPEN COURT this 21st day of October, 2013.  
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9 UNITED STATES MAGISTRATE JUDGE  
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11 Presented by:  
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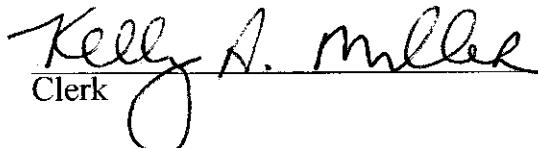
13 s/ Linda Sullivan  
14 LINDA R. SULLIVAN  
Attorney for Petitioner

15 I have received a copy of the foregoing Order of Deferred Prosecution. I have read  
16 and understand its contents, and agree to abide by the terms and conditions set forth herein.  
17

18 Dated: October 21, 2013  
19

  
JAMES NJUGUNA  
Petitioner

20 I certify that a copy of this signed Order was mailed to the subject treatment facility,  
21 on October 21, 2013. The United States Probation Office was also furnished a copy  
22 of this Order.  
23

24   
25 Clerk  
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